



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,464	06/18/2002	Thomas Huenig	ALBRE 23	3876

23599 7590 11/25/2005

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON, VA 22201

EXAMINER

OUSPENSKI, ILIA I

ART UNIT PAPER NUMBER

1644

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/049,464

Applicant(s)

HUENIG, THOMAS

Examiner

ILIA OUSPENSKI

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-15 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-15 and 19-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/3/2002</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's amendment/remarks, filed 09/22/2005, are acknowledged.

Claims 1 – 11 and 16 – 18 have been cancelled.

Claims 12 and 15 have been amended.

Claims 19 – 24 have been added.

Claims 12 – 15 and 19 – 24 are pending and under consideration.

2. This Office Action will be in response to applicant's arguments, filed 09/22/2005.

The rejections of record can be found in the previous Office Action, mailed 03/22/2005.

The text of those sections of Title 35 USC not included in this Action can be found in a prior Office Action.

It is noted that New Grounds of Rejection are set forth herein.

3. Applicant submission of reference No. 9 listed on IDS filed 09/03/2002 is acknowledged. The reference has been considered.

4. The objections and rejections of record have been withdrawn in view of Applicant's amendment and arguments, except as set forth herein.

Art Unit: 1644

5. Claim 12 is objected for the following informality: in the phrase “activating T lymphocytes, of several or all subgroups,” the comma after the word “lymphocytes” appears to be superfluous.

6. Claim 23 is rejected under **35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 is indefinite in the recitation of “said antibody,” because the recitation lacks proper antecedent basis in the base claim 12, which recites “antibodies” in plural.

Therefore, one of ordinary skill in the art would not be reasonably apprised of the metes and bounds of the claimed invention.

Applicant is reminded that any amendment must point to a basis in the specification so as not to add new matter. See MPEP 714.02 and 2163.06.

7. Claims 12 and 15 stand rejected, and newly added claims 19 and 21 – 24 are rejected, under **35 U.S.C. 102(e)** as being anticipated by June et al. (US Patent 6,534,055; see entire document).

Applicant’s arguments have been fully considered but have not been found convincing.

It is noted that the recitation in claim 12(a): “monoclonal antibodies which are specific for CD28, and which are capable of activating T lymphocytes [] without occupying an antigen receptor of the T lymphocytes and thus in an antigen-unspecific manner” is interpreted to encompass any activating anti-CD28 antibody, because it was

Art Unit: 1644

well known in the art at the time the invention was made that antibodies which are specific for CD28 do not occupy the antigen receptor of T lymphocytes.

In light of the above interpretation, Applicant's argument that according to June et al., stimulation of CD3 and CD28 is allegedly necessary, is not found persuasive, because the argument addresses limitations not claimed.

Therefore, the rejection of record is maintained for the reasons of record, as it applies to the amended and newly added claims. The rejection of record is incorporated by reference herein, as if reiterated in full.

8. Claims 12 – 14 stand rejected, and newly added claims 19 – 24 are rejected, under **35 U.S.C. 103(a)** as being unpatentable over June et al. (US Patent 6,534,055; see entire document) in view of Henнге et al. (of record: reference No. 7 on IDS; see entire document).

Applicant's arguments have been fully considered but have not been found convincing.

Applicant argues that the teachings of Hengge et al. do not complement the deficiency of June et al. in making obvious the present invention.

This is not found persuasive for the reasons explained in section 7 supra, and for the reasons of record.

The newly added claim 20 is included in the rejection, because using a protease inhibitor is a part of HAART regiment, which is the current standard for treatment of HIV infection (see e.g. Hengge et al. Introduction at page F226).

Art Unit: 1644

Therefore, the rejection of record is maintained for the reasons of record, as it applies to the amended and newly added claims. The rejection or record is incorporated by reference herein, as if reiterated in full.

9. Conclusion: no claim is allowed.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ILIA OUSPENSKI whose telephone number is 571-272-2920. The examiner can normally be reached on Monday-Friday 9 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571-272-0841. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1644

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ILIA OUSPENSKI

Patent Examiner

Art Unit 1644

November 9, 2005

PHILLIP GAMBEL
PHILLIP GAMBEL, PH.D
PRIMARY EXAMINER
7821 CENTRAL 1600
11/9/05